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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

ANDAMIRO CO. LTD.,

Cross-defendant and Appellant,

v.

ROUND ONE ENTERTAINMENT, LLC,

Cross-complainant and Respondent.

B258005

(Los Angeles County
Super. Ct. No. KC064714)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Samantha P. Jessner, Judge. Affirmed.

Lewis Brisbois Bisgaard & Smith, Raul L. Martinez, Steven E. Meyer and
Jeremiah P. Webb for Cross-Defendant and Appellant.

Musick, Peeler & Garrett, Cheryl A. Orr and William A. Bossen for
Cross-Complainant and Respondent.

INTRODUCTION

A plaintiff injured while playing an arcade game sued the company that had manufactured and distributed the game and the owner of the arcade for strict products liability and negligence. The owner of the arcade filed a cross-complaint against the manufacturer and distributor of the game. The arcade owner obtained summary judgment on the complaint, and the manufacturer and distributor settled with the plaintiff. The arcade owner then filed a motion pursuant to Code of Civil Procedure section 1021.6 to recover from the manufacturer and distributor the attorneys' fees it incurred in defending the complaint. The trial court granted the motion, awarded the arcade owner over \$27,000 in attorneys' fees, and, pursuant to the parties' stipulation that the motion for attorneys' fees had resolved all remaining issues in the case, entered judgment in favor of the arcade owner on its cross-complaint. The manufacturer and distributor appeals, arguing that the trial court erred in awarding attorneys' fees under the statute. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Injury*

Hyo Hyun and some friends went to an entertainment center in the City of Industry operated by Round One Entertainment, Inc. that included bowling lanes, arcade games, and karaoke rooms. At the entertainment center Hyun played an arcade game called King of Hammer, where "he used a hammer to hit the cylinder to get the highest score." After Hyun hit "the cylinder with the hammer as instructed," however, the "hammer coiled back and hit [him] square in the nose." At the time of the incident, there were no staff members from Round One explaining the dangers and risks of playing the game or providing assistance about how to play the game. Hyun was rushed to the hospital. Hyun suffered a fractured nose and other injuries, and required surgery for a

nasoseptal fracture and bilateral hypertrophy. He still needs a “septoplasty to treat ‘septal deviation’ and plastic reconstructive surgery.” He experienced “constant pain in his nose and difficulties with breathing,” and missed several months of work.

B. *The Litigation*

Hyun sued Andamiro USA Corporation and Round One alleging that Andamiro “designed, manufactured, and/or tested *the King of Hammer*, and placed [the] arcade game in the stream of commerce.” Hyun alleged that, at the time the game “left the hands” of Andamiro, “it was defective and unsafe in manufacture and design and lacked proper warnings,” and that neither Andamiro nor Round One ever warned him that “the hammer would coil back to the person hitting the cylinder.” Hyun asserted causes of action against Andamiro for manufacturing strict products liability, strict products liability for failure to warn, and breach of implied warranty, and against Round One for strict products liability for failure to warn and negligence based on premises liability.¹ Round One filed a cross-complaint against Andamiro for equitable indemnity, comparative indemnity, apportionment of fault, and declaratory relief. Andamiro did not file a cross-complaint against Round One.

C. *The Summary Judgment Motions*

Round One filed a motion for summary judgment or in the alternative for summary adjudication on the complaint. Round One argued that there was no evidence it had actual or constructive notice of a dangerous condition on its arcade property, no evidence it did anything to cause or contribute to the injuries Hyun sustained while

¹ Premises liability is a form of negligence. (See *McIntyre v. Colonies-Pacific, LLC* (2014) 228 Cal.App.4th 664, 668; *Brooks v. Eugene Burger Management Corp.* (1989) 215 Cal.App.3d 1611, 1619.)

playing the game, and no evidence it placed the game in the stream of commerce. Round One submitted evidence that it did not manufacture, design, assemble, or sell the King of Hammer game, and that the game does not require regular or scheduled maintenance. Hyun argued in opposition to the motion that Round One had control over the premises where Hyun was injured, had notice of the dangerous condition of the game, and was responsible for placing the game in the stream of commerce.

Round One also filed a motion for summary judgment or in the alternative for summary adjudication on its cross-complaint against Andamiro. Round One argued that it was entitled to equitable indemnity because it was undisputed that Andamiro “was the actual and/or apparent manufacturer” of the game, that any and all defects in the game “were solely attributable to Andamiro as the manufacturer,” and Round One did not alter, service, or maintain the game. Round One also argued that, despite the fact that one of Hyun’s causes of action was for negligence, there were no allegations in the complaint that Round One’s premises contributed to the damage Hyun suffered. Round One, however, withdrew its motion for summary judgment on its cross-complaint, and the court did not rule on it.

The trial court granted Round One’s motion for summary judgment on the complaint. On the cause of action against Round One for negligence, the court ruled there was “no evidence [Round One] failed to take reasonable steps to maintain the game, which was only on its premises for 38 days or that any particular maintenance would somehow have prevented plaintiff’s injuries.” On the cause of action against Round One for strict products liability for failure to warn, the court ruled that there was “no evidence to establish that [Round One] was causally connected to any product defect,” and “nothing to show that [Round One] somehow created or contributed to the alleged defect or that an inspection of the game would have disclosed such defect.” The court entered judgment in favor of Round One and against Hyun. Hyun did not appeal.

D. *The Motion for Attorneys' Fees*

Round One then filed a motion for attorneys' fees pursuant to Code of Civil Procedure section 1021.6,² which provides that a party who prevails on a claim for implied indemnity may recover its attorneys' fees if the indemnitee can show that it had to bring or defend an action "through the tort of the indemnitor," the indemnitor refused to bring or defend the action after proper notice, and the indemnitee was without fault or obtained a final judgment in its favor. Round One argued that it had satisfied all three statutory requirements with evidence that Round One, as the indemnitee, had to defend Hyun's action because of Andamiro's tort; Round One demanded a defense from Andamiro and Andamiro did not defend; and Round One was without fault and had obtained summary judgment on Hyun's complaint. Round One sought to recover from Andamiro the \$27,744.51 in attorneys' fees it had incurred in defending Hyun's complaint.

In opposition to the motion for attorneys' fees Andamiro argued that Round One had not satisfied the first requirement of section 1021.6 because Andamiro had no duty to defend Round One from Hyun's negligence claim. Andamiro also argued that Round One had not satisfied the third statutory requirement because Round One did not seek a resolution of or "a final judgment based on the principal case," and indeed Round One withdrew its motion for summary judgment on the cross-complaint. Andamiro did not argue that Round One was not entitled to attorneys' fees under section 1021.6 because Round One had not prevailed on a claim for implied indemnity in its cross-complaint against Andamiro, or that Round One had not been required to defend Hyun's complaint through any tort by Andamiro.

² Statutory references are to the Code of Civil Procedure.

The trial court found that Round One had satisfied the three requirements of section 1021.6 and granted the motion. On the first requirement, the court ruled, “The entire basis of the premises liability cause of action . . . is the fact that the arcade game, King of Hammer, causes the hammer to coil back towards the player such that the player suffers injury. That is not only the entire basis of the premises liability cause of action, but also of the strict products liability cause of action.” The court found that “[t]he tort here is the manufacturing defect, without which there would be no claim for premises liability against Round One,” that the “gravamen of the action was the defective design and manufacture of the game,” and that the “premises liability cause of action is based on the manufacturing defect in the arcade game allegedly designed, manufactured, marketed and distributed by Andamiro.” The court also noted that, although Andamiro argued it had not manufactured the King of Hammer game, it had offered “no evidence in support of this argument.” Thus, the court concluded that Round One was “an indemnitee, who through the tort of the indemnitor Andamiro, had been required to defend the [c]omplaint filed by [Hyun].” On the second and third requirements, the court found that Andamiro did not defend Round One after Round One had notified Andamiro of Hyun’s action, and that, even though Round One had not yet litigated its cross-complaint to judgment, “Round One was found to be without fault in the [principal] case” because it prevailed on a motion for summary judgment and obtained a final judgment on the complaint.

E. Judgment and Appeal

Andamiro then settled with Hyun, who dismissed his complaint. Because the parties believed that the court’s order granting Round One’s motion for attorneys’ fees pursuant to section 1021.6 resolved all of the remaining issues in the case, they stipulated that the court could enter judgment “with respect to” the cross-complaint and the award of attorneys’ fees, without waiving their rights to appellate review. The court entered judgment in favor of Round One and against Andamiro on Round One’s cross-complaint, and awarded Round One \$27,744.51 in attorneys’ fees. Andamiro timely appealed from

the judgment and “all intermediate orders and rulings embraced within the judgment.” Andamiro does not raise any issue regarding the judgment, but challenges only the award of attorneys’ fees pursuant to section 1021.6.

DISCUSSION

Section 1021.6 provides: “Upon motion, a court after reviewing the evidence in the principal case may award attorney’s fees to a person who prevails on a claim for implied indemnity if the court finds (a) that the indemnitee through the tort of the indemnitor has been required to act in the protection of the indemnitee’s interest by bringing an action against or defending an action by a third person and (b) if that indemnitor was properly notified of the demand to bring the action or provide the defense and did not avail itself of the opportunity to do so, and (c) that the trier of fact determined that the indemnitee was without fault in the principal case which is the basis for the action in indemnity or that the indemnitee had a final judgment entered in his or her favor granting a summary judgment, a nonsuit, or a directed verdict.” “Section 1021.6 authorizes attorney fees to ‘any “innocent indemnitee” who has incurred attorney fees to defend itself and has otherwise satisfied the requirements of section 1021.6.’” (*Wilson, McCall & Daoro v. American Qualified Plans, Inc.* (1999) 70 Cal.App.4th 1030, 1036; see *John Hancock Mutual Life Ins. Co. v. Setser* (1996) 42 Cal.App.4th 1524, 1533 [“section 1021.6 is arguably broader than the ‘tort of another’ doctrine,” and includes “one who had been found to be a joint tortfeasor but has been relieved of all responsibility in the fault allocation”].) We review de novo the trial court’s determination that Round One was entitled to attorneys’ fees pursuant to section 1021.6. (*Uniroyal Chemical Co., Inc. v. American Vanguard Corp.* (1988) 203 Cal.App.3d 285, 291-292.)

A. *Because the Court Entered Judgment on Round One's Cross-Complaint, Round One Is Entitled to Attorneys' Fees Under Section 1021.6*

Andamiro's primary argument is that Round One did not "prevail on a claim for implied indemnity," as required by the statute.³ As the court pointed out in *Uniroyal Chemical Co., Inc. v. American Vanguard Corp.*, *supra*, 203 Cal.App.3d 285, the statutory language "makes clear that a determination a party prevailed 'on a claim for implied indemnity' is a section 1021.6 prerequisite to the trial court's exercise of its discretion to award fees," so that "if a party did not prevail on a claim for implied indemnity, then section 1021.6 is simply not applicable." (*Id.* at p. 292; see *Watson v. Department of Transportation* (1998) 68 Cal.App.4th 885, 890 [section 1021.6 "presupposes the existence of 'a claim for implied indemnity' on which the party seeking attorney's fees has prevailed"]; *Angelus Associates Corp. v. Neonex Leisure Products, Inc.* (1985) 167 Cal.App.3d 532, 543, fn. 5 [indemnatee's "right to recover attorneys fees, if any, accrues only after it has prevailed on its cross-complaint for implied indemnity"], disapproved on another ground in *Far West Financial Corp. v. D & S Co.* (1988) 46 Cal.3d 796, 804, fn. 7; see also *John Hancock Mutual Life Ins. Co. v. Setser*, *supra*, 42 Cal.App.4th at p. 1534 ["claim for attorney fees under section 1021.6 is simply a statutory incident of [a] successful common law claim for implied equitable indemnity"].) Thus, it is only after an indemnatee has prevailed on a claim for implied indemnity that the court can consider whether the prevailing indemnatee has satisfied the three additional requirements of the statute.

³ In briefly-stated related arguments, Andamiro contends that "Round One did not establish any [] right to implied indemnity" and that "there was no relationship between Round One and Andamiro that would give rise to a right of implied indemnity in favor of Round One." These contentions are other ways of arguing that Round One did not prevail on a claim for implied indemnity.

Andamiro, however, stipulated to a judgment in favor of Round One on its cross-complaint, and the trial court entered that judgment. As a result, Round One prevailed on its cause of action against Andamiro for implied indemnity (as well as Round One's causes of action for comparative indemnity, apportionment of fault, and declaratory relief). (See *Sommers v. Erb* (1992) 2 Cal.App.4th 1644, 1650 [plaintiff who prevailed against defendant "[b]y virtue of the stipulated judgment" was entitled to reasonable attorneys' fees under section 1021.4]; *Vielehr v. State* (1980) 104 Cal.App.3d 392, 397 ["[d]efendant prevailed in the trial court with an unqualified judgment in its favor"].) Although Andamiro asserts that there was "no . . . judgment against Andamiro" and "[t]he fact Round One was awarded attorney's fees against Andamiro without first procuring a judicial determination of its status as prevailing party is astounding," there was a judgment against Andamiro on the cross-complaint and it was a judicial determination that Round One prevailed.⁴

Andamiro also argues that Round One did not satisfy the first requirement of section 1021.6, "that the indemnitee through the tort of the indemnitor has been required to act in the protection of the indemnitee's interest by bringing an action against or defending an action by a third person," because "Round One never established that

⁴ It is true that "[a]lthough a consent . . . judgment is not normally appealable, an exception is recognized when 'consent is merely given to facilitate an appeal following adverse determination of a critical issue.'" (City of Gardena v. Rikuo Corp. (2011) 192 Cal.App.4th 595, 600, quoting *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 400; see *Harrington-Wisely v. State* (2007) 156 Cal.App.4th 1488, 1495.) Thus, had Round One argued that the stipulated judgment was not appealable, Andamiro would have been able to argue that the judgment was appealable under the exception of facilitating an appeal. That exception, however, does not change the consequence of the stipulated judgment in this case, which is that Round One prevailed on its cause of action for equitable indemnity. Moreover, the stipulated judgment in this case did not "facilitate" the appeal in the usual sense; it allowed the parties to avoid litigating the primary issue in the appeal of whether Round One prevailed on a claim for implied immunity.

Andamiro's conduct was tortious."⁵ The judgment Round One obtained against Andamiro on its cause of action for equitable indemnity, however, established that Andamiro was a joint tortfeasor and responsible for the plaintiff's damages. (See *Fremont Reorganizing Corp. v. Faigin* (2011) 198 Cal.App.4th 1153, 1176-1177 ["[e]quitable indemnity is an equitable doctrine that apportions responsibility among tortfeasors responsible for the same indivisible injury on a comparative fault basis"]; *Stop Loss Ins. Brokers, Inc. v. Brown & Toland Medical Group* (2006) 143 Cal.App.4th 1036, 1040 ["[i]t is well-settled in California that equitable indemnity is only available among *tortfeasors* who are jointly and severally liable for the plaintiff's injury"]; *BFGC Architects Planners, Inc. v. Forcum/Mackey Construction, Inc.* (2004) 119 Cal.App.4th 848, 852 [for equitable indemnity, "there must be some basis for tort liability against the proposed indemnitor," and "strict liability . . . may sustain application of equitable indemnity"].) The judgment against Andamiro on Round One's cause of action for equitable indemnity establishes that Andamiro's conduct was tortious.

It is also true that, at the time the trial court ruled on Round One's motion for attorneys' fees under section 1021.6, Round One had not yet prevailed on a claim for implied indemnity and there was no evidence yet that Andamiro had committed any tort. Any error by the trial court in granting Round One's motion for attorneys' fees, however, is harmless, now that Round One has a judgment in its favor on the cross-complaint against Andamiro.

Andamiro also argues that Round One "was sued for premises liability and not merely for its role in supplying a product." Relying on the California Supreme Court's pre-section 1021.6 decision in *Davis v. Air Technical Industries, Inc.* (1978) 22 Cal.3d 1, Andamiro argues that, "[u]nder [these] circumstances, Round One must bear its own

⁵ In the trial court, Andamiro argued that Round One had not satisfied the first and third requirements of section 1021.6. On appeal, Andamiro does not challenge the trial court's finding that Round One satisfied the third requirement.

attorney's fees it incurred in defense of its own alleged wrongdoing.” The part of the California's Supreme Court's 1978 decision in *Davis* on which Andamiro relies, however, did not survive the 1979 enactment of section 1021.6.

In *Davis, supra*, 22 Cal.3d 1, the Supreme Court held that an indemnitee acting in defense of its own wrongdoing may not recover fees incurred in that action. (*Id.* at pp. 4-5.) The plaintiff in that case was injured by a defective hand-cranked portable freight elevator and sued the manufacturer and seller of the product for negligence, breach of warranty, and strict products liability, and the seller filed a cross-complaint against the manufacturer for indemnity and attorneys' fees incurred in defending the action. (*Id.* at p. 4.) The seller's “defense [to the complaint] was concerned exclusively with contesting the allegations of his own negligence and breach of warranty.” (*Ibid.*) The seller prevailed on those causes of action, but the jury found against the seller and the manufacturer on the strict products liability claim. (*Ibid.*) The Supreme Court held that manufacturers do not have “to pay attorney's fees to indemnified suppliers and distributors who have defended against allegations that they were independently liable for negligence or breach of warranty,” and that manufacturers are “not liable for attorney's fees incurred by an indemnified party solely in defense of alleged wrongdoing on its part.” (*Id.* at pp. 5-6; see *John Hancock Mutual Life Ins. Co. v. Setser, supra*, 42 Cal.App.4th at p. 1532.)

The Legislature responded to the Supreme Court's holding in *Davis* by enacting section 1021.6 to overrule it. (*John Hancock Mutual Life Ins. Co. v. Setser, supra*, 42 Cal.App.4th at p. 1532; see *Fidelity Mortgage Trustee Service, Inc. v. Ridgeway East Homeowners Assn.* (1994) 27 Cal.App.4th 503, 513 [Legislature enacted section 1021.6 to overrule *Davis*]; *Uniroyal Chemical Co. v. American Vanguard Corp.*, 203 Cal.App.3d at p. 297 [“[t]he legislative history of section 1021.6 shows the only reason for its enactment was to correct the injustice created by the *Davis* decision”].) As noted, section 1021.6 now authorizes an award of attorneys' fees to any innocent indemnitee who satisfies all of the requirements of section 1021.6. (*John Hancock Mutual Life Ins.*

Co. v. Setser, *supra*, 42 Cal.App.4th at p. 1533.) The statute only requires that the indemnitee “was involved” in the action “due to the tort of” the indemnitor, and allows recovery of attorneys’ fees even if the indemnitee’s involvement includes defending against claims that it was negligent. (*Fidelity Mortgage Trustee Service, Inc. v. Ridgeway East Homeowners Assn.*, *supra*, 27 Cal.App.4th at p. 514.) Thus, that Hyun sued Round One for negligence as well as strict products liability,⁶ and that Round One was “required to act” in defense of a claim that it was negligent, do not preclude Round One from recovering its attorneys’ fees under section 1021.6. An attempt, like the one Andamiro makes here, “to revive *Davis* and nullify section 1021.6 on the ground [the indemnitee] defended only against its own alleged wrongdoing must fail.” (*Uniroyal Chemical Co., Inc. v. American Vanguard Corp.*, *supra*, 203 Cal.App.3d at p. 297.)

Andamiro argues that section 1021.6 did not overrule *Davis* on this point because the statute “applies only when the indemnitee is obligated ‘through the tort of the indemnitor’ to defend the action,” and “[i]t follows that under implied indemnity an indemnitor is not required to indemnify the indemnitee for its attorney’s fees in cases where the indemnity is sued for its own negligence.” The first part of Andamiro’s argument is correct: the first requirement of section 1021.6 is that the indemnitee became obligated to defend an action through the tort of the indemnitor. The second part of Andamiro’s argument, however, does not follow from the first. An indemnitee, through the tort of an indemnitor, can become obligated to defend an action that includes allegations of the indemnitee’s own negligence. The Legislature enacted section 1021.6 to reverse the Supreme Court’s contrary holding in *Davis*.

⁶ Andamiro’s assertion that “Round One was not sued for its role in the stream of commerce or vicarious liability in connection with the use of the ‘King of Hammer’ arcade game, but for its own independent negligence,” is incorrect.

Andamiro also cites *Watson v. Department of Transportation*, *supra*, 68 Cal.App.4th 885 for the proposition “that *Davis* did not abrogate all aspects of section 1021.6, and specifically, did not alter the criteria for establishing a claim for implied indemnity.” Assuming Andamiro means that section 1021.6 did not abrogate all of *Davis*, Andamiro is again correct. As noted, the law states what is required to establish a claim for implied indemnity, and section 1021.6 addresses the award of attorneys’ fees only when the indemnitee has established such a claim. But section 1021.6 did abrogate the part of the *Davis* decision that an indemnitor cannot defeat an otherwise proper award of attorneys’ fees under section 1021.6 by arguing, as the Supreme Court held in *Davis* and as Andamiro argues here, that the indemnitee was sued for its own negligence.⁷

B. *Andamiro’s Argument That Judicial Estoppel Bars Round One’s Claim for Attorneys’ Fees under Section 1021.6 Is Forfeited and Meritless*

Andamiro argues that Round One was judicially estopped from arguing that “it is entitled to indemnity from Andamiro on the theory that it was somehow in the stream of commerce of the arcade game” because Round One argued in its motion for summary judgment on the complaint “that it was not in the chain of distribution of the product.” Andamiro, however, forfeited this argument by not making it in the trial court. (See

⁷ Andamiro quotes out of context the statement in a footnote of the court’s opinion in *Watson* that “[t]his assertion in *Davis* was not impugned by the enactment of section 1021.6.” (*Watson v. Department of Transportation*, *supra*, 68 Cal.App.4th at p. 894, fn. 6.) The “assertion in *Davis*” to which the footnote refers is the Supreme Court’s statement in *Davis* that the “tort of another” doctrine in *Prentice v. North American Title Guaranty Corp.* (1963) 59 Cal.2d 618, did not allow “exonerated defendants in commonplace, multiparty tort actions to recover their attorney’s fees from unrelated codefendants who were held liable.” (*Davis*, *supra*, 22 Cal.3d at p. 7, fn. 9.) The quote from the *Watson* opinion does not suggest that section 1021.6 did not impugn the Supreme Court’s holding in *Davis* that an indemnity cannot recover attorneys’ fees from an indemnitor because the indemnitor defended accusations against it. In fact, section 1021.6 did impugn that holding by overruling it.

Malmstrom v. Kaiser Aluminum & Chemical Corp. (1986) 187 Cal.App.3d 299, 319 [estoppel involves questions of fact that cannot be raised for the first time on appeal].)

Moreover, even if Andamiro had not forfeited the argument, Andamiro has not shown that judicial estoppel applies in this case. The doctrine of judicial estoppel applies “when “(1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake.”” (*Falk v. Children's Hospital Los Angeles* (2015) 237 Cal.App.4th 1454, 1469, fn. 23.) “The courts invoke judicial estoppel to prevent judicial fraud from a litigant’s deceitful assertion of a position completely inconsistent with one previously asserted, thus compromising the integrity of the administration of justice by creating a risk of conflicting judicial determinations.” (*ABF Capital Corp. v. Berglass* (2005) 130 Cal.App.4th 825, 832.) “[B]ecause judicial estoppel is an extraordinary and equitable remedy that can impinge on the truth-seeking function of the court and produce harsh consequences, it must be ‘applied with caution and limited to egregious circumstances.’” (*Minish v. Hanuman Fellowship* (2013) 214 Cal.App.4th 437, 449.)

Round One’s positions in its motion for summary judgment on the complaint and in its motion for attorneys’ fees under section 1021.6 were not totally inconsistent. (See *Meza v. H. Muehlstein & Co.* (2009) 176 Cal.App.4th 969, 983 [“[a]n essential element of judicial estoppel is that a party is taking two ‘totally inconsistent’ positions”].) In its motion for summary judgment on the complaint, Round One argued that the two causes of action against it, negligence and strict products liability, lacked merit because Round One had no notice of any allegedly dangerous condition on its property and because it did not manufacture, distribute, or sell the allegedly defective product. Round One argued in its motion for attorneys’ fees under section 1021.6 that it had prevailed on a claim for implied indemnity against Andamiro, and that it met all of the requirements of the statute,

including the first requirement that it had been required to protect its interest by defending against Hyun’s complaint. Those positions are not totally inconsistent. Round One did argue in its reply memorandum of points and authorities in support of its motion for summary judgment, in response to an argument by Hyun, that it was “not a part of the manufacturing or marketing enterprise of the subject arcade game” and was “not strictly liable on a products liability theory for an injury to [its] patron caused by an alleged product defect on the premises.” But that argument did not change the fact that Round One had been sued for products liability, had to protect its interest by defending the lawsuit any way it could, and prevailed by obtaining summary judgment in its favor, all as required by section 1021.6. Nor did Round One deceitfully assert inconsistent positions that threatened to compromise the integrity of the administration of justice. Round One exercised its rights to protect itself from a third party claim (when Andamiro refused to indemnify Round One), and then to recover from the appropriate party the attorneys’ fees it incurred in protecting itself.

DISPOSITION

The judgment is affirmed. Round One is to recover its costs on appeal.

SEGAL, J.

We concur:

ZELON, Acting P. J.

BLUMENFELD, J.*

*Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.